

FOR IMMEDIATE RELEASE
NEWS RELEASE (Prehearing)

BOISE, TUESDAY, MAY 6, 2008, AT 9:00 A.M.

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 32710

STATE OF IDAHO,)
)
Plaintiff-Respondent,)
)
v.)
)
VANCE A. WATKINS,)
)
Defendant-Appellant.)
)

Appeal from the District Court of the Third Judicial District, State of Idaho, Canyon County. Hon. Renae J. Hoff, District Judge.

Molly J. Huskey, State Appellate Public Defender; Erik R. Lehtinen, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Daniel W. Bower, Deputy Attorney General, Boise, for respondent.

Vance A. Watkins appeals from his conviction for lewd conduct with a minor under sixteen. Watkins contends that the district court committed fundamental error at trial, in violation of his constitutional right to confront witnesses against him, by allowing the State's expert witness on DNA to testify to matters she had been told by her assistant (who conducted the actual tests but did not testify) and to testify to the contents of the assistant's notes. Watkins also contends that the district court erred by overruling his hearsay objections to this evidence.

BOISE, TUESDAY, MAY 6, 2008, AT 10:30 A.M.

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 33922

STATE OF IDAHO,)
)
Plaintiff-Respondent,)
)
v.)
)
ABID ELI GARCIA-MOLINA,)
)
Defendant-Appellant.)
)

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Twin Falls County. Hon. G. Richard Bevan, District Judge.

Molly J. Huskey, State Appellate Public Defender; Jason C. Pintler, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

A jury found Abid Eli Garcia-Molina guilty of possession of a controlled substance, methamphetamine, with intent to deliver. The district court sentenced Garcia-Molina to a unified term of seven years, with a three-year period of minimum confinement. However, the district court suspended Garcia-Molina's sentence and placed him on probation for seven years. Based on a recommendation of the state, the district court also ordered that Garcia-Molina pay \$5,109.73 in restitution pursuant to an Idaho statute that permits restitution awards based on the amount law enforcement agencies spend investigating violations. Garcia-Molina appeals asserting that the district court sentenced him vindictively based on his decision to proceed to trial.

BOISE, THURSDAY, MAY 8, 2008, AT 9:00 A.M.

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 33941

STATE OF IDAHO,)
)
Plaintiff-Respondent,)
)
v.)
)
EDWARD CARMINE JARZABEK,)
)
Defendant-Appellant.)
_____)

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Deborah A. Bail, District Judge.

Teresa A. Hampton of Hampton & Elliott, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Daniel W. Bower, Deputy Attorney General, Boise, for respondent.

In the early morning hours of March 18, 2006, a passenger vehicle struck a pedestrian as she crossed a street in downtown Boise with her sister. After the accident, the driver of the vehicle drove away from the scene without stopping. The injured victim's sister called the police and reported the accident. The police subsequently stopped a vehicle driven by Edward Carmine Jarzabek a few blocks away from the accident. After administering field sobriety tests, the police arrested Jarzabek.

The state charged Jarzabek with driving under the influence and for leaving the scene of an accident resulting in an injury. Jarzabek filed a motion to suppress the evidence obtained subsequent to the stop. The district court denied the motion to suppress. At trial, the jury found Jarzabek guilty of both charges. Jarzabek filed a motion for judgment of acquittal, which the district court denied. Jarzabek appeals, challenging the district court's order denying his motion to suppress, the sufficiency of the evidence presented at trial, and several comments the prosecutor made to the jury.

BOISE, THURSDAY, MAY 8, 2008, AT 10:30 A.M.

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 34295

IN THE MATTER OF JOHN DOE, A)
MINOR UNDER 18 YEARS OF AGE.)
<hr/> STATE OF IDAHO,)
)
Plaintiff-Appellant,)
)
v.)
)
JOHN DOE,)
)
Defendant-Respondent.)
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Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. D. Duff McKee, District Judge. Hon. Cathleen MacGregor-Irby, Magistrate.

Hon. Lawrence G. Wasden, Attorney General; Jessica M. Lorello, Deputy Attorney General, Boise, for appellant.

Alan E. Trimming, Ada County Public Defender; Cameron D. Cook, Deputy Public Defender, Boise, for respondent.

John Doe, a juvenile at the time, entered an *Alford* plea admitting to striking C.L. in the face but denying he had used a tire iron as the state alleged. At the restitution hearing, C.L. testified that as a result of the battery, he had been taken by ambulance to the hospital where he received emergency treatment for a broken jaw, cheekbone, and several broken teeth. He later sought dental treatment and consulted with a specialist to determine whether his jaw injury required surgery. The state attempted to introduce copies of medical bills that C.L. testified he had received for treatment of injuries stemming from the battery. Doe objected to admission of the bills, arguing there was insufficient foundation that the services rendered were reasonable and medically necessary as a result of Doe's actions. The magistrate agreed with the objections and continued the hearing.

At the continued hearing, the state indicated it would offer no additional evidence and again moved for the admission of its previously offered exhibits. The magistrate denied the request and denied restitution, stating that there needed to be a foundation that the medical care Doe received was reasonable and necessary. The state appealed to the district court, which affirmed the magistrate's order. The state again appeals.

BOISE, THURSDAY, MAY 8, 2008, AT 1:30 P.M.

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 33127

STATE OF IDAHO,)
)
Plaintiff-Respondent,)
)
v.)
)
LARRY DWIGHT HANSLOVAN,)
)
Defendant-Appellant.)
_____)

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Joel D. Horton, District Judge.

Nevin, Benjamin, McKay & Bartlett; Dennis A. Benjamin, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

Larry Dwight Hanslovan pled guilty to delivery of a controlled substance, I.C. § 37-2732(a), and second degree kidnapping, I.C. § 18-4501. Prior to sentencing, Hanslovan moved to withdraw his guilty pleas. Hanslovan revealed to the court the existence of a “secret deal” between himself and his co-defendant and girlfriend, Barbara Dehl. Per an agreement with the state, in order for either of the two to plead guilty to the kidnapping charge, both had to plead. The state’s sentencing recommendation for Dehl was quite lenient, while the recommendation for Hanslovan was not. Although Hanslovan was reluctant to plead guilty, he had convinced the court that his plea was voluntary.

The district court denied Hanslovan’s motion to withdraw his guilty pleas, finding that the pleas were constitutionally valid and no just cause was presented to compel withdrawal. Hanslovan was sentenced to a unified term of eighteen years, with ten years determinate, for the kidnapping charge, and to a concurrent fifteen years, with five years determinate, for the delivery charge. Hanslovan filed a Rule 35 motion for reduction of his sentences, which was denied. On appeal, Hanslovan challenges the district court’s denial of his motions to withdraw his guilty pleas and for reduction of sentence.

BOISE, TUESDAY, MAY 13, 2008, AT 9:00 A.M.

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 34217

STATE OF IDAHO,)
)
Plaintiff-Appellant,)
)
v.)
)
HEATHER LUSBY,)
)
Defendant-Respondent.)
_____)

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Deborah A. Bail, District Judge.

Hon. Lawrence G. Wasden, Attorney General; Heather M. Carlson, Deputy Attorney General, Boise, for appellant.

Molly J. Huskey, State Appellate Public Defender; Kenneth K. Jorgensen, Deputy Appellate Public Defender, Boise, for respondent.

The State appeals from the district court's order suppressing evidence and dismissing charges against Heather Lusby. During an encounter with police, Lusby resisted being taken into custody and struck an officer in the face. She was charged with felony battery on a law enforcement officer, and misdemeanors for possession of drug paraphernalia and resisting an officer. Lusby moved to suppress the evidence against her and to dismiss the charges. The district court granted these motions, holding that the police had illegally crossed the threshold of an apartment to detain Lusby. The State does not challenge this holding, but argues that it did not merit the suppression of evidence or dismissal of the charges. The State contends that Lusby had no right to physically resist an unlawful arrest by battering the officer, and that she committed these crimes independently of any illegality by the officer.

BOISE, TUESDAY, MAY 13, 2008, AT 10:30 A.M.

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 33518

ROBERT HEIZELMAN,)
)
Petitioner-Appellant,)
)
v.)
)
STATE OF IDAHO,)
)
Respondent.)
_____)

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Elmore County. Hon. Michael E. Wetherell, District Judge.

Molly J. Huskey, State Appellate Public Defender; Eric D. Fredericksen, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Ralph R. Blount, Deputy Attorney General, Boise, for respondent.

The state charged Robert Heizelman with grand theft and burglary in June 1999. Heizelman pled guilty to grand theft on December 13, 1999, and the state dismissed the burglary charge. The district court sentenced Heizelman to seven years, with a minimum period of confinement of two years, but retained jurisdiction for 180 days. After the end of the period of retained jurisdiction, the district court suspended the sentence and placed Heizelman on probation for ten years. On February 7, 2003, the state alleged that Heizelman violated the terms of his probation. The district court held an evidentiary hearing and found that Heizelman committed several probation violations. The proceedings were delayed due to Heizelman's mental health problems but, on April 5, 2004, the district court found Heizelman competent to proceed and held a disposition hearing. The district court revoked Heizelman's probation and executed the original sentence.

On June 12, 2006, Heizelman acting pro se, filed a verified pleading captioned "Petition for a Writ of Habeas Corpus." Heizelman also filed a motion requesting counsel. The district court issued a notice of intent to dismiss Heizelman's pleading as an untimely application for post-conviction relief. Heizelman then filed a pro se pleading titled "Petition and Affidavit for Post Conviction Relief," and another motion requesting counsel. The district court summarily dismissed Heizelman's post-conviction action on the grounds that the pleadings were untimely as an application for post-conviction relief and asserted claims that could not be raised in a petition for writ of habeas corpus. Heizelman appeals.

BOISE, TUESDAY, MAY 13, 2008, AT 1:30 P.M.

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 33081

STATE OF IDAHO,)
)
Plaintiff-Respondent,)
)
v.)
)
JEFFERY E. MARTIN,)
)
Defendant-Appellant.)
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Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Joel D. Horton, District Judge.

Molly J. Huskey, State Appellate Public Defender; Erik R. Lehtinen, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

Jeffery E. Martin appeals from his convictions for possession of methamphetamine and possession of drug paraphernalia. Martin contends that the district court erred by denying his motion to suppress physical evidence and his statements, which Martin contends flowed from an unjustified pat-down search of his person for weapons. Martin also contends that the district court erred by denying his motion to test for DNA, at state expense, a syringe found in the camera bag containing the methamphetamine.

BOISE, THURSDAY, MAY 15, 2008, AT 9:00 A.M.

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 33622

STATE OF IDAHO,)
)
Plaintiff-Respondent,)
)
v.)
)
GERMAN CASTRO,)
)
Defendant,)
)
and)
)
STEVEN ELLEFSON dba BEST BAIL)
BONDS,)
)
Real Party in Interest-Appellant.)
_____)

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Michael R. McLaughlin, District Judge.

Weigt Law Offices, Chtd., Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Daniel W. Bower, Deputy Attorney General, Boise, for respondent.

While on probation for another conviction, German Castro was arrested for felony possession of cocaine and two misdemeanors. A motion for probation violation was filed and bond was set at \$20,000. Bond was also set for the misdemeanors and the felony possession charges. Steven Ellefson, acting for Best Bail Bonds, submitted surety bonds on behalf of Castro in all three of the cases and Castro was released. Castro denied that he violated his probation and a hearing was set where the court found he had, indeed, done so. Castro then failed to appear at the dispositive hearing, and the court forfeited the \$20,000 bond, with the clerk mailing a notice of forfeiture of bail bond to Ellefson. Ellefson, however, filed a motion to set aside the forfeiture, dismiss the action, or in the alternative, exonerate bond, arguing that he had not undertaken a bond in that case, because his copy of the bond form listed a different case number than that on the notice of forfeiture. Following a hearing on the issue, Ellefson submitted an affidavit averring that he did not undertake a bond in the case at issue. The district court denied the motion to set aside forfeiture. Ellefson now appeals.

BOISE, THURSDAY, MAY 15, 2008, AT 10:30 A.M.

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 33220

MICHAEL MAX LANE,)
)
Petitioner-Appellant,)
)
v.)
)
STATE OF IDAHO,)
)
Respondent.)
_____)

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Michael E. Wetherell, District Judge.

Nevin, Benjamin, McKay & Bartlett, LLP, Boise; Robyn A. Fyffe, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Jennifer E. Birken, Deputy Attorney General, Boise, for respondent.

Michael Max Lane pled guilty to one count of burglary, felony, I.C. § 18-1401, and one count of grand theft by receiving stolen property, I.C. §§ 18-2403(4), -2407(1). After this Court affirmed his sentences on direct appeal, Lane filed a *pro se* petition for post-conviction relief, alleging ineffective assistance of trial counsel and improper imposition of sentences; he also requested the appointment of counsel to assist him with the petition. The district court denied Lane's motion for counsel. Lane filed a second motion for appointment of counsel. Without ruling on Lane's second motion for counsel, the district court filed a notice of intent to dismiss his petition. The district court dismissed Lane's second claim that the sentences were improperly imposed. However, the district court allowed Lane to proceed with his claim of ineffective assistance of counsel.

Lane also filed a motion to withdraw his guilty pleas in the underlying criminal case, which was denied. Lane thereafter moved for an evidentiary hearing on his post-conviction claim, and again sought appointment of counsel. This time, the district court granted appointment of counsel. Lane filed an amended petition with the help of counsel. Before the evidentiary hearing could be held, Lane was transferred to Minnesota by the Idaho Department of Corrections. Lane and the state then agreed to submit the case on the evidence already before the district court. The district court denied Lane's petition for post-conviction relief. This appeal followed.

BOISE, THURSDAY, MAY 15, 2008, AT 1:30 P.M.

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 33481

STATE OF IDAHO,)
)
Plaintiff-Respondent,)
)
v.)
)
MICHAEL EDWIN CLEMENTS,)
)
Defendant-Appellant.)
_____)

Appeal from the District Court of the Seventh Judicial District, State of Idaho, Bonneville County. Hon. Gregory S. Anderson, District Judge.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for appellant-cross respondent.

Molly J. Huskey, State Appellate Public Defender; Diane M. Walker, Deputy Appellate Public Defender, Boise, for respondent-cross appellant.

In 1994, Michael Edwin Clements shot two individuals, and one of those individuals died as a result of the shooting. Clements pled guilty to second degree murder with a weapon enhancement and attempted second degree murder with a weapon enhancement. For second degree murder, the district court sentenced Clements to a unified term of life imprisonment plus fifteen years for the weapon enhancement, with a fifteen-year minimum period of confinement. For attempted second degree murder, the district court sentenced Clements to a unified term of fifteen years plus five years for the weapon enhancement, with a ten-year minimum period of confinement.

This Court affirmed Clements's judgment of conviction and sentences in an unpublished opinion. *State v. Clements*, Docket No. 22492 (Ct. App. Oct. 3, 1996). In 2006, Clements filed a pro se I.C.R. 35 motion for correction of an illegal sentence. The basis of Clements' Rule 35 motion was that he was illegally sentenced for two weapon enhancements because both shootings arose from the same indivisible course of conduct. Clements was appointed counsel for his motion, and the district court entertained argument. The district court granted Clements' Rule 35 motion and resentenced Clements for attempted second degree murder with the weapon enhancement. The state appeals from the district court's order arguing that Clements's sentence was legal. Clements cross-appeals asserting that the district court erred when it failed to conclude both of his sentences were illegal.